

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

KMART CORPORATION,

Plaintiff,

v.

1:06CV00153

RBC CENTURA BANK,

PERMITMASTERS SIGNS AND

GRAPHICS, INC., OLYMPIC SIGNS,

INC., USA SIGNS OF AMERICA, INC.,

SIGN & LIGHTING, INC., B-B SIGN

& LIGHTING, INC. and URBAN

SIGN AND CRANE, INC.,

Defendants.

O-R-D-E-R

On February 14, 2006, Kmart filed the above-captioned statutory interpleader action pursuant to 28 U.S.C. §1335, seeking the equitable distribution of certain funds to which Defendants claim they are entitled. On March 30, 2006, Defendant RBC Centura Bank (“RBC”) filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, arguing that because Kmart had not yet deposited the disputed funds or a bond, the Court lacked jurisdiction. (Pleading No. 12.)

On April 27, 2006, Kmart deposited funds in the amount \$71,366.20, representing the amount in dispute. Authority cited by Kmart in its opposition to RBC’s motion to dismiss indicates that failure to deposit the disputed funds (or a bond in lieu thereof) simultaneously with the filing of the statutory interpleader action, is not a fatal jurisdictional

defect but rather is one that a stakeholder should be permitted to cure. *See Lincoln Gen. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, No. CIV. A. 1:05CV333, 2006 WL 891045, *3 (E.D. Va. Mar. 31, 2006) (citing *CNA Ins. Companies v. Waters*, 926 F.2d 247, 249 n.6 (3d Cir. 1991)). Based on this authority and Kmart's deposit of the disputed amount into the registry of the Court, the Court will treat the motion to dismiss as moot, absent a showing by RBC that the motion still has merit.

Accordingly,

IT IS ORDERED that RBC is granted 20 days from the docketing of this Order to show why its motion to dismiss is not moot.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: September 25, 2006